IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/03/2003

CORAM

THE HONOURABLE MR. JUSTICE E. PADMANABHAN

W.P. NO. 6684 OF 1997

Vijey Amalraj .. Petitioner

- Vs -

1. The Chairman
Madras Port Trust
Madras 600 001.

2. The Chief Mechanical Engineer
Administrative Office
South Beach Road
Madras Port Trust
Madras 600 001.

3. The Secretary
Madras Port Trust
Madras 600 001. .. Respondents

Petition filed under Article 226 of The Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus as stated therein.

For Petitioners : Mr. J.James

For Respondents : Mr. M.Jegadeesan

:ORDER

1. The petitioner has prayed for the issue of a writ of certiorarified mandamus to call for the records in order Ref. No.S2/17299/92/S dated 22.12.92 on the file of the 3rd respondent and quash the same and direct respondents 1 to 3 to alter his date of birth as 27.9.1948 in his service register instead of the existing entry.
2. Heard Mr.J.James, learned counsel appearing for the petitioner and Mr.M.Jagadeesan, learned counsel appearing for respondents 1 to 3. With the consent of either side, the writ petition itself is taken up for final disposal.
3. The petitioner claims that he was born at Madurai on 27.9.1948 and was baptised at St.Joseph's Church, Gnanaolipuram, Madurai on 10.10.1948. The petitioner's date of birth has been recorded as 27.9.1948 in the municipal records.

4. According to the petitioner, his parents, being illiterates and due to inadvertence, furnished the date of birth of the petitioner as 2 1.6.1946 by which there is a difference of two years and three months. The said date of birth, viz., 21.6.1946 has been entered in the SSLC certificate and, consequently, it was also entered in the service register. The petitioner, immediately after appointment with the respondents, Port Trust, by petition dated 30.1.1976 requested for alteration of date of birth. The Chief Mechanical Engineer, by letter dated 10.3.1976 informed the petitioner that in the case of variance between SSLC Book and birth certificate with respect to date of birth, a third reliable documentary evidence should be produced preferably in the form of sworn affidavit before a Magistrate. However, the petitioner instituted the suit O.S. No.255/77 for a declaration that he was born on 27.9.1948. The suit was decreed. On the production of the certified copy, the Director of School Education altered the date of birth of the petitioner as 27.9.1948 in the SSLC Book. Thereafter, the petitioner approached the respondents for alteration of his date of birth in the service register.

5. The respondents by reply dated 22.12.1992, informed the petitioner that his request for alteration of date of birth in the Port Trust records cannot be complied with as the same is not admissible as per the rules. It is also stated that within five years from the date of entry into service, the petitioner had not moved the respondents for alteration of date of birth, while setting out an acceptable cause. However, the respondents by the impugned proce edings dated 22.12.92 declined to alter the date of birth of the petitioner despite his producing a certified copy of the decree, the first page of the amended SSLC book and other materials. Hence, the present writ petition seeking the relief of certiorarified mandamus.

6. The respondents contested the writ petition contending that within five years the writ petitioner, if at all, the petitioner should have applied for alteration of date of birth and the petitioner cannot compel the respondents to alter his date of birth.

7. The points that arise for consideration in this writ petition are :-

"i) Whether the petitioner is entitled for the issue of a writ of certiorarified mandamus directing the respondents to alter the date of birth of the petitioner in the service register as 27.9.1948 in the place of existing entries ?

ii) Whether the impugned proceedings of the respondents is liable to be quashed?

ii) To what relief the petitioner is entitled to ?"

All the above three points could be considered together.

8. Mr.Jagadeesan learned counsel appearing for the respondents contended that the petitioner is not entitled to the relief prayed for in terms of the Government O.M.; the request for change of date of birth would not be entertained unless there is a change to that effect made by the school authorities in the SSLC certificate or school records so that the Court's direction could be complied in this respect.

9. The petitioner has produced sufficient materials, namely, his birth extract and baptism certificate to show that he was born on 27.9.19 48. At the time of admission to the school, the petitioner's parents, who were illiterates, have given a wrong date of birth and it has been entered. The petitioner came to know the entry of wrong date of birth after his appointment

and within five years from the date of his appointment he moved the respondents for alteration of date of birth. There is no dispute in this respect.

10. Mr.Jagadeesan, learned counsel appearing for the respondents contends that there could be no alteration of date of birth at all unless the date of birth in the SSLC book is altered and the O.M., issued by the Central Government is binding and, therefore, no mandamus as prayed for could be issued.

11. In the present case, the registration of birth with the local authorities and the baptism certificate are not in controversy. They are accepted. The petitioner has applied for alteration of date of birth within five years from the date of his appointment and it is not as if the petitioner has approached the respondents belatedly or after a lapse of a number of years. The respondents in fact entertained the application, but they wanted a declaration. However, the petitioner went before the Civil Court and sought for a declaration that he was born on 27.9.1948 and he is entitled for alteration of his date of birth in his SSLC book. The suit came to be decreed and the first page of the SSLC book has been corrected. In the light of the said development, the petitioner renewed his request before the contesting respondents for alteration of date of birth. The contesting respondents have declined to entertain the request on a misconception. It is stated that Port Trust has no separate rules in this respect, but they follow the rules of the Central Government, which prescribes the procedure to be followed for alteration of date of birth.

12. It is true that the petitioner has not chosen to implead the respondent employer in the suit, which he instituted and secured a decree. But the petitioner has impleaded the Director of School Education and after contest, a decree has been passed and entries in the SSLC Certificate has been corrected. The O.M. referred to by the respondents, in my considered view has no application. The O.M., according to the respondents, the request from the Government servant for alteration of date of birth should not be entertained for the purposes of their service benefits and in any event not later than the completion of probation period or declaration or quasi-permanency, which ever is earlier. The O.M. relied upon will have no application nor the Government Rules, namely, fundamental rules, which provides for alteration of date of birth has been adopted by the respondents. That being the factual position, it follows automatically that the petitioner is entitled to alternation of his date of birth as applied for. The petitioner has applied well within the period of five years in terms of the existing rules, which is valid and rejection of such request is arbitrary and a misdirection.

13. When sufficient materials have been produced by the petitioner before the respondents, the respondents should have considered the same de novo in the light of the pronouncement of the Division Bench. The petitioner's date of birth in the SSLC book has also been changed in conformity with the judgment and decree. The date of birth has also been entered in the certificate of birth maintained by the said Municipal Corporation. The rejection on the ground that the request is not admissible in the rules is a misconception and cannot be countenanced.

14. As early as 10.3.1976, the respondents, Port Trust, while pointing out that the petitioner has produced birth certificate, called upon the petitioner to produce documentary evidence to the effect that the petitioner was born

earlier. It was also pointed out by the respondents that it is open to the petitioner to file sworn affidavit before the Magistrate and produce the same for further action. It is true that the petitioner has produced material before the respondents, but on the sole reasoning, which is also legally not correct that the petitioner request is belated, the request has been rejected. As per the rules governing the services, the petitioner is entitled to apply within a period of five years from the date of entry into service. In this case, the application has been filed well within time and, thereafter, as an objection has been raised, the petitioner went before the civil court having jurisdiction and the suit has been decreed. Merely because the petitioner was not a party to the suit, it cannot be contended that the respondents will not alter the date of birth. The alteration of date of birth, on the f acts of the case is warranted as the date of birth in the SSLC certificate/book has already been altered based upon the civil court's decree.

15. The respondents have declined to consider the petitioner's request for alteration of date of birth on a reasoning, which is not supported by the rules. The rules enable the petitioner to seek for alteration of date of birth within five years from the date of entry. It is true that the petitioner has applied within time, but at that stage he has not secured a decree, but he has produced certificates, namely, birth extract as well as baptism certificate, which were maintained in the regular course by the competent authorities. After getting a decree, the petitioner has approached the respondents and renewed his request for alternation. The approach of the respondents in this respect cannot be sustained at all as the respondents have proceeded on a factual misconception, in violation of Rules, which applies to the service of the petitioner. The rules of the Central Government, which has been adopted by the respondents Port Trust, enables the petitioner to seek for alteration of date of birth within five years from the date of entry into service. The petitioner has satisfied the rule.

16. In the present case, the petitioner, who has sought for alteration of date of birth at the earliest, has also established that due to ignorance and negligence of his illiterate parents, his date of birth has been entered wrongly in the school register and it was carried out. The birth extract, baptism certificate, which are contemporaneous, deserves to be accepted and the same would show that the entries in the SSLC book is not correct. The birth extract relates to the petitioner. The petitioner has also produced other materials to establish the date of birth of his brothers and sisters. There are sufficient materials to sustain the claim of the petitioner, and he has also established, that the entry in the SSLC book is not correct and he has also applied for alteration within five years and, hence, he is entitled for a direction. In this respect, the pronouncement of the Supreme Court in COMMISSIONER OF POLICE VS. BHAGWAN V.LAHANE reported in 1997 (1) SCC 247 has been rightly relied upon by the learned counsel for the petitioner. The factors to be considered while examining the claim for alteration of date of birth, which is a question of fact, all kinds of evidence and factors could be looked into for its determination. Apart from the decree to which the respondents may not be a party, there are other clinching materials to sustain the petitioner's claim. This is a fit case where certiorarified mandamus has to be issued and the impugned proceedings deserves to be quashed as there has been no application of mind nor a speaking order has been passed nor the respondents have applied their mind. Being an arbitrary exercise of power,

the impugned proceedings are liable to be quashed. Hence, the petitioner is entitled to the relief of certiorari prayed for.

17. The petitioner has secured a decree, though behind the back of the respondents, the petitioner has a certified birth extract and baptism certificates, besides certificates relating to his elder and younger brother/sister in support of his claim. There are sufficient materials to hold that the petitioner was born on 27.9.1948 and, consequently, the petitioner will be entitled for alteration of date of birth. The respondents have misdirected themselves in declining to alter the date of birth. In the circumstances, all the points are answered in favour of the petitioner.

18. Normally, this Court may not be inclined to issue a specific direction as it would be appropriate for this Court to direct the respondents to reconsider the matter. But on the facts of the case, this Court is of the considered view that there are sufficient and clinching documents to establish the date of birth and the application has been filed in this respect within the period of five years from the date of entry into service. Hence, all the three points are answered in favour of the petitioner.

19. In the circumstances, this writ petition is allowed and there will be a writ of certiorarified mandamus directing the respondents to alter the date of birth of the petitioner in his service register as 2 7.9.1948 in the place of the existing entries within a period of six weeks from the date of communication of this order. Parties shall bear their respective costs.

Index : Yes
Internet : Yes
GLN

To

1. The Chairman
Madras Port Trust
Madras 600 001.

2. The Chief Mechanical Engineer
Administrative Office
South Beach Road
Madras Port Trust
Madras 600 001.

3. The Secretary
Madras Port Trust
Madras 600 001.